

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
T. MICHAEL HANEY,)
)
Defendant.)
)

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

The plaintiff, United States of America, alleges against the defendant, T.

Michael Haney, as follows:

1. This suit is brought to enjoin Haney, and any entity through which he conducts business and all persons and entities in active concert or participation with him, from directly or indirectly:

- (a) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including promoting the “OID” program in which he makes false statements concerning that program’s tax benefits;
- (b) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including advising or assisting in the preparation of false or fraudulent tax returns and other documents, including Form 1099-OID and Schedule B, that Haney knows will (if so used) result in the understatement of tax liability;

- (c) Preparing his own federal income tax returns that falsely claim interest income and income tax withholding based on amounts shown in a false Schedule B or Form 1099-OID; and
- (d) Representing or appearing on behalf of any other persons before the Internal Revenue Service.

2. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General under §§ 7402 and 7408 of the Internal Revenue Code, 26 U.S.C. (the “Code”).

3. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1340 and 1345 and Code § 7402(a).

4. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the defendant resides and conducts business in this district and because a substantial part of the actions giving rise to this suit took place in this district.

Defendant and His Tax-Fraud Activities

- 5. Haney resides and conducts business in the Atlanta, Georgia, area.
- 6. Haney markets himself as a financial planner.
- 7. Haney promotes the “OID” tax-fraud program, which is designed to siphon fraudulent tax refunds from the U.S. Treasury.
- 8. In connection with promoting his OID program, Haney makes false

statements to his customers about the tax benefits purportedly associated with the scheme. Haney falsely informs customers that they will owe less taxes and will receive larger tax refunds under his program. He falsely informs them that the OID program is legitimate.

9. Haney began promoting his OID program in 2008.

10. As part of his OID scheme, Haney advises customers to prepare federal income tax returns that falsely report large amounts of interest income and near-equivalent amounts of federal tax withholding. The false withholdings result in large fraudulent refund claims on his customers' income tax returns.

11. In support of the fraudulent returns, Haney instructs customers to prepare false Schedule B statements reporting purported interest earned by his customers. The false interest is sometimes reported on a Form 1099-OID that the customer fabricates at Haney's direction. The customer then falsely reports a similar amount as tax withheld on the customer's return.

12. An IRS Form 1099-OID is used to report Original Issue Discount (OID) income and any federal income tax withheld on that income. OID income refers to the difference between the price for which a debt instrument is issued and its stated redemption price at maturity. OID is generally included in a taxpayer's income as it accrues over the term of the debt instrument, whether or not the taxpayer actually

receives payments from the issuer of the debt instrument. OID is treated like payment of interest and a party issuing a financial instrument generating OID must issue a Form 1099-OID. The Form 1099-OID must be filed with the IRS by the issuer and is typically sent to the taxpayer for reference.

13. The Forms 1099-OID that Haney's customers submit with their returns are simply documents wholly fabricated by the customer (at Haney's direction) that falsely report large amounts of fictitious income and falsely report that federal income taxes were withheld in the full amount of the OID purportedly earned by the customer.

14. On returns that do not include a Form 1099-OID, Haney's customers report false interest income on a Schedule B and simply claim exaggerated false tax withholdings on the return.

15. Consequently, Haney's customers fail to file correct federal income tax returns and claim tax refunds to which they are not entitled. Oftentimes, the OID returns that Haney's customers file falsely request refunds in excess of \$100,000. One of Haney's customers (Kenneth Ham) claimed a false refund for tax year 2007 of more than \$800,000. The fraudulent OID returns submitted by Haney's customers contain fraudulent refund claims of more than \$3.5 million.

16. In a May 2008 letter to William and Ellen Call, Haney described the

OID program as a “fantastic benefit that was granted to all citizens when our gold was taken away in 1933”

17. Haney told Anthony and Katina Jones that the OID program is a little known government benefit and that under the program the government pays refunds to individuals based on their yearly expenses.

18. Based on Haney’s program and advice, the Joneses filed 2008 income tax returns that requested false refunds totaling more than \$240,000. According to Katina Jones, the fee for Haney’s services was based on the amount of the refund.

19. Haney represented the Joneses during the IRS examination of their 2008 returns. During the examination, Haney prepared and notarized frivolous correspondence and other documents that were sent to the IRS that were intended to hinder the examination. The materials falsely question the IRS’s authority to disallow items reported on tax returns.

20. In correspondence to customers, Haney falsely states that his OID program helps individuals “to resolve almost all commercial entanglements.” In marketing his program, Haney states:

Using just one example . . . you “buy” a new car (pay the tax on a prepaid item); you make payments; you file your 1099-OID forms for that year and claim not only the entire cost of the car but the payments too. The IRS returns the tax you paid as just described and you now take the funds you just received and “pay” off the car. Then you file

your next year's tax forms and subsequent 1040 tax RETURN, you receive that amount again. This time however, you[r] car is paid for so what will you do with the funds you received? To sum up, you have the pink slip and the funds have been returned that you used to acquire the vehicle. Do you see now how the car was free?

21. Haney has promoted his scheme to at least ten individuals who have filed false or fraudulent OID returns.

22. Haney practices for himself what he preaches to others. Haney has prepared and filed fraudulent OID federal income tax returns for both himself and his wife, Jeanelle Haney.

23. For tax year 2007 Haney filed a fraudulent return reporting no income and \$182,913 in fictitious tax withholding. In support of the return, Haney attached a Form 1099-OID showing the false withholding. The IRS erroneously issued a \$120,450 refund to Haney and erroneously applied \$62,463 to offset Haney's tax liabilities for other years.

24. Haney filed a similar fraudulent return for himself for tax year 2008. On that return Haney falsely claimed a \$182,380 refund based on a fictitious Form 1099-OID that reported that amount of withholding. The IRS was able to stop the refund for tax year 2008 before it was paid.

25. The IRS assessed penalties against Haney for filing his frivolous 2007 and 2008 OID returns.

26. The OID tax fraud scheme – as promoted and used by Haney – has been spreading across the nation for the past several years, creating significant enforcement challenges for the IRS. Scheme perpetrators, including Haney, have already cost the United States millions of dollars in unrecovered erroneous refunds. Accordingly, the IRS issued a nationwide “problem alert” warning taxpayers about the same tax scheme that defendants are promoting in this case, on October 10, 2008.

(See <http://www.irs.gov/newsroom/article/0,,id=98129,00.html>.)

27. The OID program is not Haney’s first dip in the tax-dodging pool. Haney was previously associated with a “zero return” scheme in which he assisted customers in submitting federal income tax returns that fraudulently reported zero income. The customers’ returns would typically report only the standard deduction, an exemption amount, and any withholding. The result was an erroneous clam for a refund of all withholding.

28. The IRS has listed both the “OID” and “zero return” programs on its annual “dirty dozen” tax scams to avoid:

<http://www.irs.gov/newsroom/article/0,,id=220238,00.html>.

29. Haney’s conduct and the frivolous positions he asserts in representing customers before the IRS cause substantial harm to the United States.

30. In reliance on Haney's promotion and services, his customers have failed to file proper federal income tax returns, which has either deprived the customers of proper tax refunds to which they may have been entitled, or deprived the United States of additional tax revenue owed by his customers.

31. The false tax returns and forms prepared and submitted by Haney's customers also may cause the assessment of frivolous filing penalties against them, and erroneous penalties against the creditors identified in the forms for failing to timely or accurately submit the forms to the IRS.

32. Haney's misconduct imposes a heavy burden on the IRS. The IRS must continue to devote scarce resources to detect and examine the inaccurate returns prepared by Haney. The IRS must expend valuable resources in an attempt to assess and collect the unpaid taxes from Haney's customers.

Count I – Injunction under Code § 7408

33. Code § 7408 authorizes courts to issue injunctions against conduct that is subject to penalty under Code §§ 6700 or 6701 or that is subject to any other penalty under the Internal Revenue Code.

34. Code § 6700 imposes a penalty on any person who organizes or sells a plan or arrangement and in connection therewith makes a statement with respect to the allowability of any deduction or credit, the excludability of any income, or the

securing of any tax benefit by participating in the plan or arrangement that the person knows or has reason to know is false or fraudulent as to any material matter.

35. Code § 6701 imposes a penalty on any person who aids in or advises with respect to the preparation of any portion of a tax return or other document that the person knows or has reason to believe will be used in connection with a material matter under the internal revenue laws, and that the person knows would, if used, result in understatement of another person's tax liability.

36. In connection with promoting or marketing his OID program, Haney makes statements regarding the tax benefits associated with participation in the program that he knows or has reason to know are false or fraudulent as to material matters within the meaning of Code § 6700. Haney has thus engaged in conduct subject to penalty under Code § 6700.

37. Haney has assisted in the preparation or filing of federal tax returns and other documents (such as Form 1099-OID) for others knowing that the returns or documents would, if used, result in the understatement of another person's federal tax liability. He has engaged in conduct that is subject to penalty under Code § 6701, and an injunction under Code § 7408 is appropriate.

38. Haney knows the statements he makes and positions he espouses in connection with his discredited OID program are false or fraudulent. Haney knows

the IRS has rejected his own returns that used the OID scheme, and has assessed penalties against him for relying on his arguments.

39. Unless enjoined by the Court, Haney is likely to continue to market his abusive program or another abusive arrangement, assist in the preparation of documents that he knows will result in the understatement of tax liability, and engage in other misconduct of the type described in this complaint.

40. Accordingly, Haney should be enjoined under Code § 7408 from engaging in conduct subject to penalty under Code §§ 6700 or 6701.

Count II – Injunction under Code § 7402

41. Code § 7402(a) authorizes courts to issue injunctions “as may be necessary or appropriate for the enforcement of the internal revenue laws.” The remedies available to the United States under this statute “are in addition to and not exclusive of any and all other remedies.” Code § 7402(a) .

42. The defendant, through the actions described above, has engaged in conduct that substantially interferes with the administration and enforcement of the internal revenue laws, and is likely to continue to engage in such conduct unless enjoined by the Court. Haney’s conduct is causing irreparable injury to the United States and an injunction under Code § 7402(a) is necessary and appropriate.

43. Unless Haney is enjoined, the IRS will have to devote substantial time

and resources to identify and locate his customers, and then construct and examine their tax returns and liabilities. The burden of pursuing all individual customers may be an insurmountable obstacle, given the IRS's limited resources.

44. The Court should order injunctive relief under Code § 7402(a).

WHEREFORE, the United States of America requests the following relief:

A. The Court find that T. Michael Haney has continually or repeatedly engaged in conduct subject to penalty under Code §§ 6700 and 6701, and that injunctive relief is appropriate to prevent him, and any business or entity through which he operates, and anyone acting in concert with him, from engaging in further such conduct;

B. The Court find that Haney has engaged in conduct that substantially interferes with the enforcement and administration of the internal revenue laws, and that injunctive relief against him is appropriate to prevent the recurrence of that misconduct pursuant to Code § 7402(a);

C. The Court, pursuant to Code §§ 7402 and 7408, enjoin Haney, and any entity through which he conducts business and all persons and entities in active concert or participation with him, from directly or indirectly:

- (1) Engaging in conduct subject to penalty under 26 U.S.C. § 6700, including promoting the "OID" program in which he makes false statements concerning that program's tax benefits;

- (2) Engaging in conduct subject to penalty under 26 U.S.C. § 6701, including advising or assisting in the preparation of false or fraudulent tax returns and other documents, including Form 1099-OID and Schedule B, that Haney knows will (if so used) result in the understatement of tax liability;
- (3) Preparing his own federal income tax returns that falsely claim interest income and income tax withholding based on amounts shown in a false Schedule B or Form 1099-OID; and
- (4) Representing or appearing on behalf of any other persons before the Internal Revenue Service.

D. The Court, under Code § 7402(a), enter an injunction requiring Haney to contact by mail all persons who have purchased his OID program since January 1, 2007, to inform them of the Court's findings in this matter and enclose a copy of the injunction entered against him, and to file with the Court within fifteen days of the date the permanent injunction is entered a certificate signed by him under penalty of perjury that he has done so;

E. The Court, under Code § 7402, order Haney to provide to counsel for the United States a list of all persons (including names, addresses and social security numbers) to whom he has sold his OID program since January 1, 2007;

F. The Court authorize the United States to engage in post-judgment discovery to monitor Haney's compliance with the injunction entered against him; and

G. That the Court grant the United States such other and further relief as the Court deems just and appropriate.

Date: March 3, 2011.

Respectfully submitted,

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